

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #8	CCRB Case #: 201601941	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/04/2016 8:45 PM	Location of Incident: 525 Lexington Avenue	Precinct: 17	18 Mo. SOL 9/4/2017	EO SOL 9/4/2017	
Date/Time CV Reported Sat, 03/05/2016 3:25 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/10/2016 1:41 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Brian Byrnes	00969	917357	NARCBMS
2. DT3 Paul Rivera	01283	940050	NARCBMS
3. DT3 Salvatore Vieni	3017	945338	NARCBMS
4. DT2 Hoiping Lee	02882	917860	NARCBMS
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Emerito Dejesus	07309	915573	NARCBMS
2. DT2 Clifford Reilly	05422	931021	NARCBMS
3. DT3 Jacob Merino	4949	928777	NARCBMS
4. DT3 Dia Allen	107	937966	NARCBMS

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Salvatore Vieni	Force: Detective Salvatore Vieni used physical force against § 87(2)(b)	
B.DT3 Paul Rivera	Force: Detective Paul Rivera used physical force against § 87(2)(b)	
C.SGT Brian Byrnes	Force: Sergeant Brian Byrnes used physical force against § 87(2)(b)	
D. An officer	Force: An officer used physical force against § 87(2)(b)	
E.DT2 Hoiping Lee	Force: Detective Hoiping Lee used physical force against § 87(2)(b)	
F.DT3 Salvatore Vieni	Force: Detective Salvatore Vieni used physical force against § 87(2)(b)	
G.DT2 Hoiping Lee	Abuse: Detective Hoiping Lee refused to provide his name to § 87(2)(b)	

### Case Summary

There is no video footage associated with this incident. At approximately 9:45 p.m. on March 4, 2016, § 87(2)(b) arrived at room 1610 on the 16<sup>th</sup> floor of the Marriott Hotel, located at 525 Lexington Avenue in Manhattan. She reportedly was there as a masseuse, but shortly after her arrival and brief conversation with an unidentified undercover officer with whom she had made arrangements, § 87(2)(b) fled down the hallway. As she ran, members of the Manhattan Vice Squad—including Detective Salvatore Vieni, Detective Paul Rivera, and Sergeant Brian Byrnes—exited from room 1612 and allegedly all tackled her to the ground, causing a large amount of pain in her arms (**Allegations A, B, and C**). As the officers restrained § 87(2)(b) an officer whom she did not see allegedly dug his fingernails into the back of her left hand, causing abrasions on her left knuckles that actively bled (**Allegation D**). While on the ground, Det. Vieni and another officer present, Detective Hoiping Lee of the same command, allegedly used closed fists to punch her approximately three times in the stomach, head, and leg, causing a large bruise on her inner left thigh (**Allegations E and F**).

After being handcuffed and escorted into the hotel room, § 87(2)(b) reportedly felt dizzy and in so much pain in her leg that she collapsed to the ground. Det. Vieni allegedly saw this and believed her to be faking, so he yanked her upwards by her right arm, causing severe pain in that area (**subsumed within Allegation E**). § 87(2)(b) was subsequently escorted down to a police van downstairs. Before being transported to the hospital, § 87(2)(b) allegedly asked Det. Lee for his name, though he merely replied that he was an officer without giving a name (**Allegation G**). § 87(2)(b) was ultimately arrested for resisting arrest and prostitution.

### Mediation, Civil and Criminal Histories

- In light of § 87(2)(b)'s arrest and injury, this case was deemed unsuitable for mediation.
- Despite multiple prior arrests (see Board Review #1), a search of OCA (see Board Review #2) revealed no prior criminal convictions for § 87(2)(b).
- As of the date of this report, a request for any notice of claim with the City of New York related to this case is still pending.

### Civilian and Officer CCRB Histories

- Det. Vieni has been a member of the NYPD for eight years and has been a subject in one prior CCRB case involving one allegation of physical force (see Board Review #4), which was exonerated. § 87(2)(g)
- Det. Lee has been a member of the NYPD for nineteen years and has been a subject in ten prior CCRB cases involving eighteen allegations (see Board Review #5), none of which have been substantiated. He has been the subject of eight prior physical force allegations, four of which were unsubstantiated, three of which were closed as complainant/victim uncooperative, and one of which was unfounded. He has not been the subject of any refusal to provide name or shield information.
- Det. Rivera has been a member of the NYPD for ten years and has been a subject in three prior CCRB cases involving six FADO allegations (see Board Review #6). Four allegations as part of case #201001407, including for a stop, frisk, search, and refusal to provide name/shield were substantiated and he received instructions from the NYPD. Two other force allegations have been pleaded against him in the past, though both were unsubstantiated.

- Sgt. Byrnes has been a member of the NYPD for nineteen years and has been a subject in four prior CCRB cases involving eight allegations (see Board Review #7). One allegation of failure to show a search warrant was substantiated against him, for which the CCRB recommended Command Discipline B. Only one prior physical force allegation has been pleaded against him, which was administratively closed. § 87(2)(g)
- This is the first CCRB complaint filed by § 87(2)(b) (see Board Review #8).

### **Potential Issues**

This closure of this case exceeded ninety days due to the officers' collective denial of involvement in the force and the need to interview all eight members of the field team, two of whom cancelled their interviews and needed to be rescheduled.

Separately, as it was determined that three other suspects, § 87(2)(b) and § 87(2)(b) had already been arrested when § 87(2)(b) was brought into the room, contact attempts were made to obtain witness statements. § 87(2)(b) was contacted and she provided a telephone statement. A telephone number and two addresses, all from Las Vegas, Nevada, were obtained for § 87(2)(b) via her arrest report and a LexisNexis search. Between April 11, 2016 and May 9, 2016, four calls were placed to § 87(2)(b) though the line kept ringing each time and there was never any option to leave a voicemail. On the final call on May 16, 2016, an unidentified man answered and ultimately stated that he did not know § 87(2)(b). As for § 87(2)(b) three telephone numbers and three addresses were found via her arrest report and a LexisNexis search. One was found to be a non-working number, while another reached an unidentified man who stated that he did not know § 87(2)(b) and had only gotten the number two weeks earlier. Between April 11, 2016 and May 16, 2016, five calls were placed to the third number, though no one ever answered and voicemail messages were left each time requesting a call back. Additionally, two letters, none of which have been returned to the CCRB via the United States Postal Service, were mailed to each of the addresses found for § 87(2)(b) and § 87(2)(b). However, as of the date of this report, neither individual has contacted the CCRB.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

Although § 87(2)(b) stated (see Board Review #9) that Det. Vieni, Det. Allen, Det. Lee, and Sgt. Byrnes exited from the adjacent room, chased her down the hallway, and tackled her to the ground, the investigation determined that this was unlikely to be the case. Det. Vieni, Det. Lee, Det. Allen, Sgt. Byrnes, Det. Merino, Det. Rivera, and Det. DeJesus all acknowledged exiting into the hallway and observing § 87(2)(b) on the ground. Yet, no officer admitted to actually taking her down or even witnessing the takedown. Instead all officers maintained that they observed § 87(2)(b) after she was already on the ground.

Det. Vieni stated (see Board Review #10) that after he saw Sgt. Byrnes and Det. Rivera initially struggling with § 87(2)(b) on the ground, he went to assist and grabbed one of her arms. Sgt. Byrnes stated (see Board Review #11) that Det. Vieni was the first officer to exit the room and contact § 87(2)(b) followed by himself and then Det. Rivera, with the latter two assisting once she

was struggling with Det. Vieni. Det. Rivera stated (see Board Review #12) that he exited to find Sgt. Byrnes struggling with § 87(2)(b) so he immediately went to assist by securing the handcuffs.

Meanwhile, Det. Lee maintained (see Board Review #13) that he observed Sgt. Byrnes, Det. Vieni, and another officer whom he could not positively identify struggling on the ground. Det. DeJesus (see Board Review #14) stated that when he exited, he observed Det. Vieni, Sgt. Byrnes, and Det. Rivera struggling with § 87(2)(b). Det. Allen (see Board Review #15) and Det. Merino (see Board Review #16) both stated that they did not recall which officers they observed in contact with § 87(2)(b). No officer definitively claimed that Det. Lee, Det. Allen, Det. Merino, or Det. DeJesus assisted in the apprehension, and all four of those officers denied making physical contact with her in the hallway.

§ 87(2)(b), § 87(2)(g)

**Allegation A—Force: Detective Salvatore Vieni used physical force against § 87(2)(b)**

**Allegation B—Force: Detective Paul Rivera used physical force against § 87(2)(b)**

**Allegation C—Force: Sergeant Brian Byrnes used physical force against § 87(2)(b)**

§ 87(2)(b) stated that she is a high-end licensed masseuse and was called to the Marriott Hotel to give a massage. She denied ever agreeing to any acts of prostitution. She claimed that after the client (an undercover officer) opened the door and welcomed her inside, she took only a few steps into the room before feeling that something was not right. § 87(2)(b) stated that she then asked the man if he was a cop and he replied that he was not. Regardless, § 87(2)(b) maintained that she still felt uneasy, so she immediately ran away down the hallway. She alleged that officers exited from the next room and chased her down the hallway before all tackling her to the ground. She maintained that she did not know which officers made contact with which parts of her body.

Medical records from § 87(2)(b) Hospital (see Privileged Documents) showed that on the night of the incident, § 87(2)(b) complained of a large amount of pain to her left shoulder, which she attributed to being pushed to the ground by the police. It noted that she was able to move all of her extremities freely and did not display any signs of acute distress. The physician suspected that § 87(2)(b) dislocated her shoulder, so her arm was placed in a sling and she was discharged. Four days after the incident on § 87(2)(b), § 87(2)(b) returned for follow up examination. The x-ray showed that there was borderline widening of multiple joints, but no acute fracture or dislocation.

Det. Vieni, Det. Lee, Det. Allen, Sgt. Byrnes, Det. Merino, Det. Rivera, and Det. DeJesus were all consistent that they heard some kind of commotion in the hallway shortly after § 87(2)(b) arrived at the undercover officer's room, either in the form of arguing/yelling or footsteps. Det. Lee, Sgt. Byrnes, and Det. DeJesus all stated that they also heard a voice shout, "She's running."

When a civilian who is subject to a lawful arrest flees from the police, an officer is justified in pursuing and tackling that individual to the ground to prevent their escape. Any resulting injury suffered as a result of that tackle is a function of the civilian's own conduct. Police Department v. Stuart, OATH Index No. 583-84/88 (May 18, 1989) (see Board Review #17).

§ 87(2)(b), § 87(2)(g)

**Allegation D—Force: An officer used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that after she had been tackled, an officer whom she did not see and could not identify dug his or her fingernails into the back of her left hand, causing circular abrasions to her knuckles that actively bled. She provided a photograph of these injuries (see Board Review #18), which were reportedly taken sometime between four to eleven days after the incident. Medical records confirmed that § 87(2)(b) displayed abrasions to the back of her knuckle at § 87(2)(b) Hospital, though there was no cause cited.

With the exception of Det. Reilly, all other officers stated that they had not seen any abrasions as shown in the photographs, nor did they take or observe any actions that could have caused such injuries, such as scraping the back of her hand. No officer saw the back of § 87(2)(b)'s hand in contact with any surface, such as a carpet or wall. The only officer who observed this injury was Det. Reilly (see Board Review #19), who was downstairs in the lobby when § 87(2)(b) was apprehended. Det. Reilly stated that after being called to escort a loud suspect out of the hotel room, he arrived to find § 87(2)(b) in the room and observed abrasions such as those seen in the photograph on the back of her hand. He maintained that at some point, § 87(2)(b) told him an officer had dug his fingernails into her knuckles. Det. Reilly maintained that no officer ever told him how this injury was sustained or acknowledged taking the alleged action.

Although the abrasions to § 87(2)(b)'s hand were corroborated by both Det. Reilly and the medical records, there is still no independent account of how those abrasions were sustained. § 87(2)(b), § 87(2)(g)

**Allegation E—Force: Detective Hoiping Lee used physical force against § 87(2)(b)**

**Allegation F—Force: Detective Salvatore Vieni used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that the officers immediately grabbed her arms and pulled them behind her back, causing a large amount of arm pain that made her cry and tell them not to be so rough. § 87(2)(b) maintained that she did not resist in any way, such as by flailing or pulling away. § 87(2)(b) alleged that after she was completely subdued on the ground, Det. Lee and Det. Vieni used closed fists to punch her approximately three times in the stomach, head, and legs, causing a large bruise on her inner left thigh (see Board Review #20). § 87(2)(b) stated that as a result of their handling of her, she also sustained a small bruise on her inner right knee (see Board Review #21) as well as redness on both shoulders (see Board Review #22). § 87(2)(b) further stated that after being brought into the hotel room, dizziness and pain in her leg caused her to collapse to the floor. § 87(2)(b) alleged that in response, Det. Vieni told her that she was merely acting and yanked her upwards by her left arm, causing severe pain. § 87(2)(b) maintained that she yelled that her arm was in pain and could not walk. It is undisputed that § 87(2)(b) was ultimately sent to the hospital.

As mentioned above, medical records from § 87(2)(b) Hospital (see Privileged Documents) § 87(2)(b) complained to medical personnel of a large amount of pain to both shoulders, left arm, and left leg, all of which she attributed to being pushed to the ground by the police. It noted that all of her extremities were mobile and that did not display any signs of acute distress. She displayed redness and bruising on her left arm, but no redness or swelling was noted on her left leg. Although it was suspected that she had a dislocated shoulder, follow up x-rays showed that there was borderline widening of multiple joints, but no acute fracture or dislocation. During that follow up visit, she also presented with bruising on both inner thighs, which she attributed to the same police incident.

§ 87(2)(b) one of the other suspects who had been arrested before § 87(2)(b) and was being detained in the room, stated (see Board Review #23) that § 87(2)(b) was yelling and acting out of control when she was brought in. § 87(2)(b) recalled that one or two white male officers were in contact with her as they placed her in a chair. § 87(2)(b) maintained that § 87(2)(b) yelled that the officers had hurt her and that her shoulder was in pain. § 87(2)(b) stated that § 87(2)(b) also may have had a bruise or other injury on one hand, though she could not specifically recall. § 87(2)(b) stated that at one point, § 87(2)(b) intentionally fell out of her chair onto the ground. § 87(2)(b) stated that this prompted an officer to make contact with her, though she did not recall what specific actions he took. § 87(2)(b) stated that after being in the room for about five minutes, § 87(2)(b) was escorted out.

All officers were consistent in that § 87(2)(b) was resisting officers' attempts to restrain her in some way. Det. Vieni stated that she was kicking and rolling back and forth. Det. Lee stated that she was attempting to crawl and pull away as officers held her down. Sgt. Byrnes and Det. DeJesus both stated that she flailed her arms and legs as well as twisted her torso. Det. Allen, Det. Rivera, and Det. Merino all similarly stated that she shifted her shoulders and torso.

Det. Vieni and Det. Lee both denied ever punching or observing any other officers punch § 87(2)(b) at any point during this incident. Similarly, all other officers present denied witnessing any punches or blunt force employed by any other officer and instead claimed that the only force

observed was pulling her arms behind her back. Furthermore, Det. Vieni maintained that the only force he used against her was grabbing her arms and pulling them behind her to handcuff her. Meanwhile, Det. Lee denied making any physical contact with § 87(2)(b) whatsoever in the hallway. Sgt. Byrnes, Det. Merino, and Det. Rivera all confirmed that § 87(2)(b) was speaking while on the ground, but none could understand or recall her specific statements.

All officers were consistent in that they never observed § 87(2)(b) in any acute physical distress. Det. Vieni denied knowledge of her ever falling to the floor or lifting her to her feet. Det. Rivera and Det. Merino similarly stated that they did not recall seeing her fall or seeing any officer lift her up. The other four officers all acknowledged seeing § 87(2)(b) fall to the ground, but all stated that she did so on her own in what appeared to be a display of melodrama. Det. Lee stated that he was the officer that lifted § 87(2)(b) to her feet, but denied yanking her in a traumatic fashion. Sgt. Byrnes, Det. DeJesus, and Det. Allen all stated that they saw an officer whom they could not recall lift § 87(2)(b) to her feet, but similarly denied that the officer yanked her up as described. When shown photographs of the bruising to § 87(2)(b)'s leg and shoulder areas, all officers stated that they did not see any such injuries during this incident, any actions that could have caused them, or any force applied to those areas. When informed that § 87(2)(b) was believed to have sustained a dislocated shoulder, all officers stated that they did not know what caused it. Det. Lee and Det. Rivera both maintained that he suspected it may have been caused by § 87(2)(b)'s flailing and pulling away from officers when they apprehended her.

§ 87(2)(b), § 87(2)(g)

**Allegation G—Abuse of Authority: Detective Hoiping Lee refused to provide his name to**

§ 87(2)(b)

§ 87(2)(b) alleged that while speaking to Det. Lee at the van outside of the hotel, her crying prompted him to ask her what was wrong. § 87(2)(b) reported that she told him he did not have to be rough with her and that if he had a family, he would have more compassion. § 87(2)(b) alleged that she then asked Det. Lee for his name, at which point he stated that he was an officer, but departed without providing any name.

Det. Lee stated that after escorting § 87(2)(b) to the van, she told him that he had a black heart and made derogatory comments about his mother, which he did not appreciate but to which he did not respond. Det. Lee maintained that he soon returned upstairs and that § 87(2)(b) never requested his name. Det. Lee denied that he ever refused to provide such information to her. Det. Vieni and Det. Reilly both acknowledged helping to escort § 87(2)(b) to the van downstairs, while Det. Allen came afterwards to join Det. Reilly in transporting her to the hospital. All three officers

maintained that they never heard § 87(2)(b) speaking to Det. Lee, nor did they hear her ask for his name or hear him refuse to provide his name.

§ 87(2)(b), § 87(2)(g)

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Squad: \_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date